

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

TRADE POLICY STAFF COMMITTEE

CERTAIN STEEL PRODUCTS

INVESTIGATION NO. TA-201-73

EXCLUSION REQUEST

ON BEHALF OF

BHP STEEL (AIS) PTY, LTD., BHP STEEL (JLA) PTY, LTD.,

BHP NEW ZEALAND STEEL LIMITED

AND

BHP STEEL AMERICAS, INC.

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On behalf of BHP Steel (AIS) PTY, Ltd., BHP Steel (JLA) PTY, Ltd., BHP New Zealand Steel Ltd., and BHP Steel Americas, Inc. (collectively "BHP"), we request exclusion of slab from any import relief ordered by the President in the Section 201 investigation of *Certain Steel Products*. In accordance with the guidelines established by the Office of the United States Trade Representative¹, we submit the following information in support of our exclusion request.

I. EXECUTIVE SUMMARY

Slab should be excluded from any import relief ordered by the President in this investigation. Slab is a necessary feedstock for the production of finished flat-rolled products -- every ton of imported slab becomes a ton of finished domestic flat-rolled steel.

Slab is imported into the United States either by rolling mills which lack any slab-making capacity, mills whose rolling capacity is substantially greater than their slab-making capacity, and mills in the process of relining their furnaces. Overall, U.S. flat-rolling capacity is substantially greater than U.S. slab-making capacity, as U.S. mills are in the process of upgrading or closing down their older, inefficient crude steel-making facilities. Because almost all domestically produced slab is captively consumed, U.S. mills must import slab to maintain their rolling mills at maximum capacity and efficiency. The need for imported slab is particularly acute for West Coast steel producers because there is essentially no western supplier of commercial slab and freight costs render purchasing slab from eastern mills prohibitively expensive.

The excess flat-rolling capacity of U.S. mills and the needs of West Coast steel producers require the continued importation of slab. Failing to exclude this product from import relief would harm a significant number of U.S. flat-rolled producers.

¹ See 66 Fed. Reg. 54,321, 54,322-23 (Oct. 26, 2001).

II. PRODUCT INFORMATION

A. Commercial Name and HTS Numbers

1. **Commercial Name:** Carbon and alloy slab.
2. **HTS Classification:** 7207.12.0010, 7207.12.0050, 7207.20.0025, 7207.20.0045, and 7224.90.0055.

B. Physical Description of Product

A slab is a semifinished steel product produced by continuous casting or by hot-rolling or forging. Thin slabs, which are typically produced in minimills, are immediately consumed in the hot-rolling process and are thus not available for the merchant market. Regular slabs of carbon steel have a rectangular cross-section with a width at least two times the thickness. Regular slabs of other alloy steel have a width at least four times the thickness. All slabs are considered to be semifinished steel products that are consumed by steel producers to make downstream steel products, such as sheet, strip and plate.²

C. Basis for Exclusion

1. **Statutory Basis for Exclusion**

The statutory framework governing Escape Clause investigations requires the President to balance the economic welfare of the country with that of the affected industry in determining appropriate remedial action in response to an affirmative injury finding by the International Trade Commission. Section 203(a) of the Trade Act of 1974 states that, upon receiving the Commission's report, the President shall take "all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a

² This product description was taken from the October 12, 2001 Staff Report of the International Trade Commission ("ITC Staff Report") at FLAT-1.

positive adjustment to import competition *and provide greater economic and social benefits than costs.*³ Among other things, the President must consider “the short- and long-term economic and social costs of the actions authorized . . . relative to their short- and long-term social benefits and other considerations relative to the position of the domestic industry in the United States economy.”⁴ The President must also consider “other factors related to the national economic interest of the United States, including, but not limited to . . . the effect of the implementation of actions . . . on consumers and on competition in domestic markets.”⁵ Ultimately, the cumulative impact of any import restrictions imposed may not “exceed the amount necessary to prevent or remedy the serious injury” found.⁶

Where there is inadequate domestic production of a product consumed in the United States, restricting imports of the product will harm domestic consumers without providing any concomitant benefit to the domestic steel industry. Domestic production that is inadequate to meet consumption needs is therefore a proper ground for excluding a product from import relief.

2. Factual Basis for Exclusion

Slab imports should be excluded from any import relief ordered by the President because there is a shortage of domestically produced, commercial slab in the United States. West Coast steel mills must import slab because they have been unable to satisfy their consumption needs through U.S. producers. Imports of this feedstock facilitate the adjustment of U.S. mills to import competition because every ton of imported slab becomes a ton of finished domestic flat-rolled steel.

³ 19 U.S.C. § 2253(a)(1) (emphasis added).

⁴ *Id.* § 2253(a)(2)(E).

⁵ *Id.* § 2253(a)(2)(F)(ii).

⁶ *Id.* § 2253(e)(2).

Slab is imported into the United States by rolling mills which lack any slab-making capacity, mills whose rolling capacity is substantially greater than their slab-making capacity, and mills in the process of relining their furnaces. Overall, U.S. flat-rolling capacity is substantially greater than U.S. slab-making capacity. Almost all domestically produced slab is captively consumed; commercial shipments of domestic slab in 2000 accounted for less than 1% of total domestic slab production.⁷ To maintain their rolling mills at maximum capacity and efficiency, U.S. mills must import slab.

The imbalance between the slab-making and flat-rolling capacities of domestic mills is the result of a technological transition underway in the domestic industry. The industry is essentially divided into three segments: (1) older “integrated” mills which produce steel utilizing a blast furnace (BF) / blast oxygen furnace (BOF) process that consumes primarily iron ore, coke and lime to produce raw steel; (2) newer, low-cost “minimills” utilizing electric arc furnaces (EAFs) that consume steel scrap and virgin iron to produce raw steel; and (3) steel mills that are not fully integrated, *i.e.*, they no longer make (or never made) raw steel. With respect to those mills making raw steel, the minimills have significantly lower costs of production than the integrated mills, which often have old, inefficient blast furnaces, old and high-cost coke ovens, and high labor, maintenance, and environmental costs. As a result, U.S. integrated producers are steadily reducing their BF/BOF steel-making capacity by allowing their more inefficient facilities to close as they reach the end of their useful lives, rather than incur substantial costs of relining and rebuilding them. Thus, they have chosen to purchase slab (which must be imported) to supply their rolling mills.⁸

⁷ See ITC Staff Report at FLAT-1 n. 2.

⁸ U.S. minimills cannot make up the domestic short fall of slab. Minimills typically produce very thin slabs that are immediately consumed in order to produce finished steel

The recent testimony of the former chairman of Wheeling-Pittsburgh Steel underscores the importance of slab imports to the ability of integrated mills to adjust to global competition. Discussing Wheeling Pittsburgh's efforts to restructure after going into Chapter 11 bankruptcy last year, Mr. Paul Bucha stated:

The best way to adjust to global competition is not to exclude or artificially restrict the volume of fairly traded imports, but rather to work with it. Wheeling Pittsburgh has developed a restructuring plan that is fully supported by our union members for modernizing its facilities, leveraging our world class rolling facilities and which allows for some imported slab as a complement to our domestic production. . . .

This plan has been in development for over a year. It relies on the ability to import slab both during a transition period and in the future as a complement to U.S. production. Ironically, if the Commission and the President restrict slab imports the result would be to destroy our efforts to achieve the very objectives of Section 201.

In broad terms, the plan is as follows. Our company has two very old blast furnaces dating back to 1898 and 1910. The current capacity of these two furnaces is approximately 2.6 to 2.7 million tons annually. We will build a new electric arc furnace and decommission the furnace built in 1898. When combined, between the EAF and our remaining blast furnace we will have a capacity of approximately 2.2 million tons.

Our rolling facilities are world class and have a capacity of approximately three million tons per year. Thus, it will be necessary to import slab both while we build the electric arc and even after the electric arc is on line to fill the gap between our new primary operations and our rolling capacities.⁹

By enabling domestic mills to maintain their rolling operations at capacity as they upgrade or retire their inefficient slab-making facilities, slab imports help firms adjust to global competition and, once adjusted, allow them to remain competitive.

products. As the ITC Staff Report indicates, these slabs are not available for the merchant market. *See* ITC Staff Report at FLAT-1 n.1.

⁹ Hearing Tr. (Remedy Phase) at 116-18.

Slab imports also sustain the operations of domestic steel producers that have no crude steel-making capacity. California Steel Industries ("CSI") and Duferco-Farrell are among the most important non-integrated producers of flat-rolled products, serving the western and eastern markets in the U.S., respectively. Because there is effectively no domestic merchant market for slab, these producers must import slab. Domestic producers would not begin to supply slab for the merchant market if the President restricted slab imports. As the President and CEO of CSI, Lorenzo Goncalves, testified before the Commission:

Don't think that the domestic integrated steel industry will supply CSI or AK {Steel} or Oregon {Steel Mills} or Duferco with slabs. They will not. The level playing field that they are advocating is a very interesting playing field. They will be busy, and, being busy, they will not have room to supply any slabs at all, as they never did. The level playing field is a playing field that they went out grabbing our customers. This is their ultimate goal. . . . Don't believe that they will supply slabs. Even Geneva Steel will not have the ability. They will not have time. They will not have an order book. They will not have the quality. They will not have the specifications. They will not have the intention because they compete with us for the same end products to the same customers, so they have no motivation to supply us with any slabs, even if we have no access to slabs.¹⁰

CSI's need for imported slab is particularly acute because it is located in the West Coast steel market, where the demand for slab far exceeds the domestic supply. The West Coast market is distinct and isolated from the rest of the U.S. steel market as a result of the high freight costs of transporting steel from mills east of the Rocky Mountains. The only domestic producer of commercial slab located anywhere near the West Coast is Geneva Steel Co. Geneva Steel, however, operates antiquated facilities, produces a low-quality product, has been in and out of bankruptcy for years, and, as the President of CSI testified, would much prefer to use its raw steel-making to feed its own downstream production lines than to sell its slab on the open

¹⁰ *Id.* at 346-47.

market.¹¹ With no regional supplier of slab, West Coast steel mills must import slab in order to survive.

BHP's slab exports to the United States primarily serve the West Coast market. Over the period of investigation, BHP established a strong commercial relationship with [a West Coast producer of flat-rolled products]. During the same period, BHP shipped slab produced at its Port Kembla steelworks in New South Wales to [DELETED MATERIAL] -- in small volumes (and there were [DELETED MATERIAL]).

The excess flat-rolling capacity of U.S. mills and the critical needs of the West Coast steel market require the continued importation of slab. The shortage of domestically-produced slab for the merchant market will only increase with import restrictions on downstream products, as U.S. mills would rather supply the higher value downstream product than the feedstock -- slab -- from which it is produced. Because restricting slab imports would harm domestic mills that must rely on a foreign source of supply, slab imports should be excluded from any import relief ordered by the President in this investigation.

D. Names and Locations of Foreign and Domestic Slab Producers¹²

1. **Foreign Producers:** Australia -- BHP; Brazil -- Aço Minas Gerais S.A., Companhia Siderúrgica Paulista, Companhia Siderúrgica Nacional, Companhia Siderúrgica de Tubarão, and Usinas Siderúrgica de Minas

¹¹ The President and CEO of Oregon Steel Mills, Inc., Joe Corvin, confirmed that Geneva Steel was not a viable source of slab:

After the injury phase hearings we sent a group from Oregon Steel Mills to Geneva to investigate the possibility, which this is the third time we've done that, of purchasing slabs from Geneva. Again, they cannot make the specifications, nor are they willing to. . . . What they want to do is not supply slabs to us. What they want to do is to supply plate to our customers or to our downstream finishing facilities which in essence would cause us to shut down our rolling mill. That's what Geneva Steel wants.

Id. at 384.

¹² The list of foreign and domestic slab producers is non-exhaustive.

Gerais; Mexico -- Ispat Mexicana; Korea -- POSCO; CIS -- Azovstal Iron and Steel Works, Ilyich Iron and Steel Works, Novolipetsk Iron and Steel Corporation; Europe -- Certain European slab producers.

2. **Domestic Producers:** AK Steel Corp., Bethlehem Steel Corp., Geneva Steel Co., Gulf States Steel, Inc., IPSCO Enterprises, Inc., Ispat Inland, Inc., LTV Steel Co., Inc., National Steel Co., Nucor Corp., Oregon Steel Mills, United States Steel LLC, WCI Steel, Inc., Weirton Steel Corp., and Wheeling-Pittsburgh Steel Corp.

E. **Total U.S. Consumption**¹³

Actual Consumption

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>Jan-June 2000</u>	<u>Jan-June 2001</u>
Quantity (ST)	69,755,183	71,403,265	71,105,828	71,823,361	74,073,508	39,494,389	33,391,880

Basis: Sum of production and import quantities reported in ITC Staff Report at Tables FLAT-4 and FLAT-12.

Projected Consumption

Unknown.

F. **Total U.S. Production**¹⁴

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>Jan-June 2000</u>	<u>Jan-June 2001</u>
Quantity (ST)	63,457,778	65,986,893	65,754,181	64,455,285	66,813,694	35,398,241	31,017,850

Source: ITC Staff Report at Table FLAT-12.

¹³ Because almost all domestic slab (which accounts for the majority of domestic consumption) is consumed internally, we are unable to report the values corresponding to the quantities of total U.S. slab consumption and production.

¹⁴ See *supra* note 13.

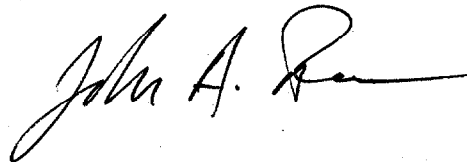
G. U.S. Produced Substitute for Imported Product

None.

III. CONCLUSION

Because the domestic supply of commercial slab is plainly insufficient to satisfy the needs of domestic rolling mills and integrated mills which purchase slab to produce domestic finished flat-rolled products, and because West Coast steel producers have no viable domestic source of slab, this product should be excluded from any import relief ordered by the President in this investigation.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John A. Romano". The signature is fluid and cursive, with a long horizontal stroke at the end.

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